

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-217851

DATE: July 31, 1985

MATTER OF: Bureau of Land Management; Payment of Fees
to National Archives and Records
DIGEST: Administration for Reproduction of
Documents.

Where neither National Archives and Records Administration (NARA) nor its predecessor National Archives and Records Service (NARS) of the General Services Administration has requested or received appropriations for the purpose of reproducing documents for other agencies, NARA (and NARS) may charge all agencies for the cost of reproducing documents on their behalf under authority of 44 U.S.C. § 2116 since this is the most equitable way of allocating costs in performing this activity.

This decision is in response to an inquiry from Edward P. Greenberg, Chief of the Division of Finance, Bureau of Land Management (BLM), Department of the Interior, asking whether BLM may certify and pay fees assessed by the National Archives and Records Administration (NARA) (formerly the National Archives and Records Service (NARS) of the General Services Administration^{1/} to cover the cost of reproducing BLM land entry papers and related documents, including land records of the former General Land Office, which are in the custody of NARA. For the reasons given below, we hold that certification and payment are authorized.

Until April 1, 1985, the NARS was authorized to assess fees for the reproduction of documents under 44 U.S.C. § 2112(c) (1982) which provided:

"(c) The Administrator may charge a fee not in excess of 10 percent above the costs or expenses for making or authenticating copies or reproductions of materials transferred to his custody. * * * He may not charge for making or authenticating copies or reproductions of

^{1/} Effective April 1, 1985, the former National Archives and Records Service was transferred to the newly established and independent National Archives and Records Administration. See 44 U.S.C. § 2101 as added by Pub. L. No. 98-497, § 101, October 19, 1984, 98 Stat. 2280. See also §§ 103 and 301 of Pub. L. No. 98-497, 98 Stat. 2283, 2295.

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materials for official use by the United States Government. Reimbursement may be accepted to cover the cost of furnishing copies or reproductions that could not otherwise be furnished."

Standing alone, the penultimate sentence of subsection 2112(c) would have served to preclude NARS from assessing and collecting a fee from other Government agencies for the reproduction of documents needed for their official use. However, this prohibition was modified by the last sentence which authorizes reimbursement when the copies could not otherwise be furnished.

Title 44, United States Code, was enacted into positive law by Pub. L. No. 90-620, Oct. 22, 1968, 82 Stat. 1238. Subsection 2112(c) codified without substantive change section 509(c) of the Federal Property and Administrative Services Act of 1949, as added by the Act of September 5, 1950, ch. 849, sec. 6(d), 64 Stat. 583, 589.

Prior to the enactment of section 509(c), the Archivist was precluded from charging other Government agencies the cost of reproducing documents in his custody by language similar to that set forth in the penultimate sentence of 44 U.S.C. § 2112(c). 44 U.S.C. § 300h (1946). However, this led to problems which the 1950 amendment was intended to correct as explained in the Report by the Senate Committee on Expenditures in the Executive Departments:

"Section 509(c) continues the provisions of existing law with respect to fees for reproductions of records. The proviso at the end of the subsection is new, and its purpose is to permit the furnishing of reproductions that might be vital to the interest of the Government at times when funds necessary for furnishing them were unavailable to the Administrator." (Emphasis supplied.) S. Rep. No. 2140, 81st Cong. 2d Sess., 18 (1950). See also H. Rep. No. 2747, 81st Cong. 2d Sess., 17 (1950).

Thus, until April 1, 1985, the National Archives and Records Service of GSA could recover the cost of furnishing copies of documents in its custody only when funds were unavailable to it for that purpose. See GAO, Improvements Are Needed In the Management of the National Archives Preservation and Trust Fund Activities at 14-15 (LCD-80-13, B-146743, Oct. 26, 1979).

Effective April 1, 1985, section 2112 was redesignated section 2116 and subsection (c) amended to read:

"(c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to his custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. * * * The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the Archivist for this purpose are insufficient to cover the cost of performing the work." See Pub. L. No. 98-497, Oct. 19, 1948, 98 Stat. 2280, 2292 (§ 201).

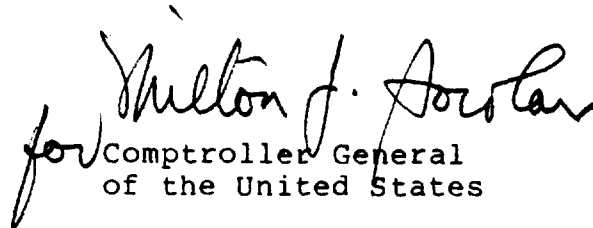
Thus, 44 U.S.C. § 2116(c) authorizes the Archivist of NARA, beginning April 1, 1985, to assess and collect a fee from agencies for reproductions of documents in NARA's custody when appropriations available to the Archivist are insufficient to cover the performance of the work.

We note that NARA's activities are funded from lump-sum appropriations covering all of the agency's activities. (This was also the case with NARS.) While in the absence of anything to the contrary, these funds would be available for reproducing documents for other agencies, it is also clear that they are not intended to be used solely for that purpose. However, neither 44 U.S.C. § 2116 nor its predecessor, 44 U.S.C. § 2112, provide any guidance as to how funds should be allocated for this purpose. Absent OMB apportionment of a specific amount for this purpose (and we have been informally advised by officials at NARA that OMB does not apportion the appropriation in this manner) the Archivist normally would have discretion in determining the amount of funds available for reproduction of documents.

We previously called attention to the fact that NARS was charging agencies for documents when it still had unobligated balances in its operating expenses appropriation but we did not find it legally impermissible to do so. See GAO report, cited above. Thereafter, NARS opted not to request appropriations

for this purpose but to fund the entire program on a reimbursable basis.^{2/} This avoided the problem caused by NARS funding of reproductions for agencies without charge until allocated funding was exhausted and then charging for copies of documents. Inequities inevitably resulted since there was no way to know in advance the quantity of reproduction services that NARS would have to provide to other agencies or when agencies would request the services. Thus, any system of allocation which resulted in a shortfall ultimately favored early users, regardless of the volume of service provided, over later users.

In view of the foregoing, as long as NARA neither requests nor receives appropriations for the purpose of reproducing documents for other agencies, we have no objection to its charging all agencies for the cost of reproducing documents on their behalf under authority of 44 U.S.C. § 2116 since this is the most equitable way of allocating cost in performing this activity. This rationale would apply as well to NARA's predecessor, NARS. Thus, BLM is authorized to certify for payment the fees assessed by NARS or NARA to cover the cost of reproducing BLM land entry records.


for Comptroller General
of the United States

^{2/} See for example, Hearings on Treasury, Postal Service, and General Government Appropriations For Fiscal Year 1985, Part 5, before a Subcommittee of the House Appropriations Committee, 98th Cong., 2d Sess., 120 (1984). See also S. Rep. No. 98-562 accompanying the Treasury Postal Service and General Government Appropriation bill, 1985, 61 (1984) where it states:

"No funds are included in the operating expenses, National Archives and Records Service appropriation for providing reproduction of records to Federal agencies. Agencies will be charged cost in accordance with 44 United States Code 2112(c)."